

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

**SUB COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY
SB 322**

Call to Order: By **CHAIRMAN FRED THOMAS**, on March 19, 1999 at 11:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. Fred Thomas, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Chris Christiaens (D)

Members Excused: None.

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Martha McGee, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 322, 3/17/1999
Executive Action:

SUBCOMMITTEE MEETING ON SB 322

CHAIRMAN FRED THOMAS called the Subcommittee meeting to order and informed the members that **SEN. WATERMAN** was away on business and would not be able to attend today's meeting. They are going to work on this bill now and then report this afternoon at 3:00 p.m. to the Senate Public Health Committee.

Informational: **Chuck Butler, Blue Cross/Blue Shield of MT**
Chris Tweeten, Chief Legal Counsel
Attorney General's Office
Tom Ebzery, Yellowstone Community Health Plan
Michael Becker, Legal Counsel Blue Cross

Peter Funk, Legal Counsel, Auditor's Office
Steve Browning, Representing, MHA
Montana Hospital Association
Claudia Clifford, Insurance Commissioner's Office

SEN. CHRISTIAENS said he has made as a suggestion for some kind of movement toward conciliation, in looking at a 20% material amount of fair market value in a 3 year look back. He doesn't know what if anything people have done with that.

CHAIRMAN THOMAS asked if anybody wanted to kick that around a little bit.

Questions from the Committee Members and Responses:

SEN. CHRISTIAENS asked if it was discussed?

SEN. WATERMAN said it was discussed and that her preference if there is going to be a compromise from the current provision in the bill.

CHAIRMAN THOMAS asked if they are talking about the current statutory look back or an expanded one that is in the bill?

SEN. CHRISTIAENS said he was looking at utilizing the Grey draft and since there was an amendment(09) talking about a material amount, meaning 40%, he is suggesting, what if this 20% and there seems to be a question as to "look back" five years or nothing, what about 20%, and then a three year look back?

EXHIBIT (phs62b01)

Chuck Butler said he hopes Blue Cross/Blue Shield has been pretty clear on the look back provision that they have a serious problem with that.

Tom Ezbery, Yellowstone Community Health Plan, said the look back is not the principal feature of the bill and he doesn't see that it has any justification anyway. It wasn't in any NAIC thing. It kind of was added at the last moment and they know for whom, and they strongly urge that that be deleted.

CHAIRMAN THOMAS said **SEN. CHRISTIAENS** and everybody present is not aware of this set of amendments being offered at this point in time. Whatever they recommend before the Committee this afternoon does then go through the process to the Senate Floor and the House, etc. All they would be is doing something at this point at in time.

CHAIRMAN THOMAS said to **Susan Fox** he thought he had an amendment in the bill on this area. Those amendments that they did go to the original bill, they are not to the Grey draft.

Susan Fox answered right. The amendments are always prepared for the real bill.

CHAIRMAN THOMAS asked to see what they have there. He asked **Susan Fox** if she would walk through the smaller amendment.

SEN. CHRISTIAENS said it seemed to him there were really only two issues, the look back and the material amount.

Susan Fox said these amendments are combined with those amendments, with some of the amendments off of the draft that were already there and amendment #2 deals with the material amount. It still is at 40% and an it's without look back and without numerator or denominator language. The rest of the amendment are the ones that everyone has seen before in Section 1 and 2. Amendment #SB032212.asf.

EXHIBIT (phs62b02)

CHAIRMAN THOMAS asked in that first amendment, what are we doing there?

Chris Tweeten clarified that they work off of the **SB322** the introduced copy.

CHAIRMAN THOMAS answered yes. These amendments apply to SB 322. Susan has done a lot of work on this. That have Grey versions that is why the questions are pertinent.

Susan Fox said they should apply. They have not been edited or proofed, they are rough. But they should be okay.

CHAIRMAN THOMAS asked about the first amendment.

Susan Fox explained amendment number one was used to help with all the other definitions in the bill, nonprofit is defined separately from the entity. So this was actually just to clean up Subsection #7, which was nonprofit health care insurer. It basically is a clean up where it takes the definition and defines "healthcare insurer" and then "nonprofit" is defined separately. So it has the same intent as it did before but that was just a clean up amendment that **SEN. WATERMAN** had proposed.

Susan Fox continued, amendments 3 and 4, deal then with that definition of "nonprofit". This goes back to another version,

but it "includes a mutual benefit corporation to the extent that the corporation holds assets in a charitable trust" within the definition of nonprofit, and then the term "nonprofit" modifies these other terms throughout the bill states "healthcare insurer, hospital, health maintenance organization."

SEN. GRIMES noted the amendment wasn't on the sheet.

Susan Fox clarified it was amendments 3 and 4 of amendment #SB032212.asf.

CHAIRMAN THOMAS said they were now on number 5.

Susan Fox said this was kind of technical because of amendments #7 and #9, it was brought up at one point that "charity" was not a defined term, so they go back to using the term that is defined, "nonprofit."

Susan Fox explained amendment #10 is part of the definition of the "nonprofit healthcare conversion transaction". It states "(b) The term does not include the investment of funds or other disposition of financial assets of a nonprofit healthcare entity in the ordinary course of its business." And then amendment #11 just goes along with healthcare insurer, that is where it was defined as a nonprofit healthcare insurer, instead of just defining the term health care insurer to modify the definition of nonprofit.

CHAIRMAN THOMAS said, obviously on amendment #2, they would have a lot of opinions on that in the room. They will just skip that one for the time being. Does anybody have any questions, or concerns within the other amendments that they have been talking about?

Tom Ebzery said he was trying to plug these in now. Every thing else in the bill, including the look back remain the same?

Susan Fox explained, what they did was just try to do this by Sections. There are numerous other amendments for other sections of the bill, so this is a different way of dealing with it, but there are other amendments that will take care of the other look back provisions.

Tom Ebzery answered, okay this is just section 1, 2, and 3?

Susan Fox clarified is it just Section 1 and 2, they don't get into Section 3, yet. That will be the next set.

CHAIRMAN THOMAS asked if there any other questions on these amendments, other than these two, everybody doesn't have a perfect example.

Chris Tweeten asked just to clarify with respect to amendment #4, there has been several different versions of the definition of nonprofit that have floated around. Some of which have specifically included "mutual benefit companies" and the original definition. The Attorney General's Office position has always been that they don't think the scope of this bill needs to go any further than the existing jurisdiction of the Attorney General which is over charitable trust. They don't regulate mutual benefit companies now. They never wanted to as a result of this bill anyway. He has talked to **SEN. WATERMAN** about that at some length, and she is agreeable to, as he understands it, amendment #4, which would exclude a "mutual benefit company" except in those situations where the mutual holds a charitable trust asset and then it would be included only to the extent of the charitable asset that it holds.

CHAIRMAN THOMAS asked **Chris Tweeten**, so you agree with that amendment #4?

Chris Tweeten replied, yes. He just wanted to say that for the record, and tell them that he talked to **SEN. WATERMAN** and she has also told him that she agrees with that position.

CHAIRMAN GRIMES said okay. And the materiality amount then applies to the extent to which that mutual benefit company holds assets in a charitable trust?

Chris Tweeten answered right.

Michael Becker, Blue Cross/Blue Shield, stated that Blue Cross agrees with that as well. And they appreciate the agreement and understanding.

CHAIRMAN THOMAS asked if there was any further discussion on that amendment or any of these other amendments, excluding Amendment #2? Okay.

CHAIRMAN THOMAS asked if they want to decide on Amendment #2 or do they want to wait and save the fun for last?

SEN. CHRISTIAENS remarked maybe they could just pull that one out and segregate it and then adopt the other portions and save that one for later.

Motion: **SEN. CHRISTIAENS** moved **SB 322 BE AMENDED BY ADOPTING**

AMENDMENTS #SB032212.asf., SET OF AMENDMENTS #1, AND AMENDMENTS # 3 THROUGH AMENDMENTS #11, SEGREGATING AMENDMENT #2 OUT.

Vote: The Motion Carried.

CHAIRMAN THOMAS said they have some other amendments. They will hold open Amendment #SB032212.asf, item #2.

SEN. GRIMES asked about walking through the bill.

CHAIRMAN THOMAS said they have other amendments and if everyone was okay with that. He clarified they were working off of the introduced version of SB 322.

CHAIRMAN THOMAS clarified these amendments apply to the original bill.

Susan Fox explained these amendments are on Sections #3 and #4. They delete the "exception -- request for information -- refusal grounds for disapproval" language. Basically what remains is, "A nonprofit healthcare entity is required to provide written notice to and obtain the approval of the attorney general prior to entering into any nonprofit healthcare conversion transaction."

CHAIRMAN THOMAS asked if that is amendment #1?

Susan Fox answered yes that would be Amendments #1 and #2. She clarified that the remainder of subsection #1 is stricken after the first sentence. So at the time of providing notice, through subsection #4, all comes out. And then Amendments #3, #4, and #5 change the first sentence to say, "within 90 days of filing a written notice as required by Section 3" and then the remainder of that sentence is the same. Then the extension is deleted.

CHAIRMAN THOMAS asked for comments on these amendments.

{Tape : 1; Side : A; Approx. Time Counter : 1 - 13}

Chris Tweeten, Chief Legal Counsel, Attorney General's Office, said he would start off since they are the ones who are going to carry the ball on this process. The workability of deleting the possibility of a 60-day extension depends to a certain extent on what's done in later sections of the bill with respect to the provisions dealing with contracted services and other costs that are going to be incurred by the Attorney General's Office in conducting the review. If those are left intact, and they have the resources to do the review, then maybe 90 days will be sufficient in most cases. With that caveat, if it is the

Legislature's wish have a flat 90-day period of time to do these reviews, they will do the best they can to meet that time frame. He would warn them that unless the bill is going to leave the resources provision intact, it is going to be very difficult to make that work.

CHAIRMAN THOMAS asked if he means the other entity in question paying for the review.

Chris Tweeten, replied right, their ability to have access to contracted services at the expense of the applicant.

CHAIRMAN THOMAS said he thought that would be their intent to do that.

Chris Tweeten said their preference would be to have the option of an extension, but it is the Legislature's desire that that not be there, they will work with whatever they decide to do.

Michael Becker, Blue Cross/Blue Shield of Mt, said he just wanted to clarify for **Mr. Tweeten** and the Committee that Blue Cross/Blue Shield is supporting keeping the access to resource provision in the bill. They are not asking and he doesn't know if any other parties are proposing to kick that out, but they are certainly supporting it. In so far as the 90-day time frame, he thinks the Committee should keep in mind that if you contrast this with a merger or acquisition of an insurance company, under the Insurance Company Holding Act in Montana, the Insurance Commissioner has 30 days from the notice to hold the hearing and 30 days from the hearing to issue a decision. He has a whole bunch of review elements that he has under that Holding Company Act, and he has a 60-day window to get that done. So they think 90 days here for this type of a review is reasonable.

Chris Tweeten said the only reaction he has to that is the Insurance Commissioner has staff on board that works in this area in a routine, day in and day out, which may make a shorter period of time for them reasonable. They are not asking for an additional staffing to carry out these functions, they are planning to do with the existing staff and using contracted services. He is not arguing against the amendment, he is just saying that the situations are not exactly analogous, he doesn't think.

Michael Becker, said he wanted to clarify one point that **Mr. Tweeten** made in regard to the resources of the Department of Insurance when reviewing mergers of insurance companies. They have a very similar provision in the Holding Company Act in

regard to the hiring of experts and consultants to enable them to conduct a review for that process. Yes, there may be some staff members at the Department of Insurance that have some of this expertise, but when it comes to the high-powered experts, the actuaries, the accountants, they would go outside for that in many instances.

SEN. CHRISTIAENS said that would be a question he would have for **Chris Tweeten** with the resources and limited staff, you would have the ability to contract for the services or the outside people that you think you would need that would make up for what you may be lacking if you were in the Auditor's Office?

Chris Tweeten answered they have thought about this in determining how they would handle a large healthcare conversion if one came up, in sort of general terms. You can't plan in too much detail, but their thinking has always been that they'd certainly need outside experts in financial areas, mortgage banking and accounting, those sorts of things they would have to contract for. Depending upon the complexity of the transaction and the issues that it presents, outside counsel may be necessary as well. They have access to agency legal services in their office that they can hire. It is like any other state agency does to augment the regular staff of the Attorney General's Office in cases where they need them. That is a very economical way for them to bolster their staffing capabilities because they charge, he thinks \$62.00 per hour now, which is considerably less than what most outside counsel charges in Helena now. So they would look at that as an option and to the extent that they felt they would need specialized expertise they would hire outside counsel from the private sector. He could expect that all of those would be covered by the resources provisions provided in the bill and that is the way they would attack one of these things if it came.

Claudia Clifford, Insurance Specialist, Insurance Commissioner's Office said she has just gone through this process herself and, their staff having gone through it with the time lines that they have, it is a very stressful process. It took a number of people in their office full time to work on it. She personally was supposed to try contracting an economist which they could not do within that time period. So they were left without enough time to contract with experts because these experts are busy. They need to free their schedule for the work. She suggests particularly in the area, maybe they can limit the extension if they can't contract for the expertise that they need, but you need that flexibility. They couldn't find an economist with free time immediately.

Chris Tweeten said he thought the Grey bill language addresses **Claudia Clifford's** suggestion. It says the Attorney General may extend this period for an additional period 60 days, if the extension is necessary to obtain information pursuant to Section 3 or Section 8. Section 3 is the information they get from the applicant, and Section 8 is the information they get from their outside consultants. So that seems to him to be a middle ground here that addresses **Claudia Clifford's** concern. He said in thinking about **Mike Becker's** comments, the lead time that you have to have to get experts on board, selecting the experts, going through a process to find the right experts, actually contracting with them and freeing their time in order to bring their talents to bear on the problem, sometimes it takes a matter of a few weeks.

CHAIRMAN THOMAS asked when does this 90-days start ticking? Does it start ticking once this process is gone through a great deal of evaluation?

Chris Tweeten said the originally language was it started ticking when they received the completed application. Under the amendment, the completed provision has been deleted. So if the intention is that when they get the first written notice from the applicant, that's when the clock starts to tick, that creates further problems because sometimes the application is not going to be complete. They are going to have to get further information from the applicant before the whole problem in context is clear enough even to begin working on.

Claudia Clifford said the other problem that they have is that they have limitations on how much they can spend on a contract, or, but you have to put it out for a RFP (Request for Proposal). It was \$5,000, but she is not sure if it has been increased to another amount, but if you need to spend more than that threshold you have to put it out as an RFP through purchasing, and that really slows the works. This is not a very practical time line from their end and she appreciates the position of the companies. The companies have a business decision that they want to make in a timely manner and buttress it up against their own sort of difficulties in meeting what she thinks are real tight time lines. They worked under a lot of stress very hard to meet those time lines.

Chris Tweeten said with respect to the last point on purchasing, the Grey bill provision would exempt them from Title 18, so they wouldn't be subject to those RFP requirements in "hiring experts under the provisions which are in the Grey bill. That aspect of it would be somewhat less complicated if that language is adopted.

Michael Becker said he just wanted to respond to something that **Claudia Clifford** said in regard to the Y CHIP review process. When they started that process, the issue of hiring an expert, whether the Department wished to hire an economic expert was discussed with them right up front. The clear answer they got was "no". It wasn't until the 11th hour, when Deaconess Hospital was involved and contesting the matter and Deaconess Hospital was raising the issues, that the Department, if ever, sought to actually contract with an expert, an economic expert in this case. And this is news to them today, that they actually sought out an expert to hire. They knew they had talked to people in general about the process at the tail end as they were going to hearing. But they did not understand that they were looking to hire an expert from day one and they couldn't do it within the 60 day time frame.

CHAIRMAN THOMAS asked how does that apply specifically to this discussion on the extension?

Michael Becker answered he thinks it just reinforces their view that 90-days is adequate. If they put an extension in the bill for 60-days, most of these review processes are going to kick into this 5 month review. That is far too much time and delay for one of these transactions to be held up in a regulatory review. The Insurance Holding Company Act contemplates mergers and acquisitions of insurance companies being reviewed by the Insurance Commissioner within a 60-day time frame, and that is a model act, it is adopted all across this country. They think that is a very reasonable time frame. This is even more reasonable, 90-days.

CHAIRMAN THOMAS asked if they could live with a 30-day extension? He thought they could, don't they think?

SEN. GRIMES said to him the whole thing comes down to when really the notice is given prior to entering into any nonprofit healthcare conversion transaction. He is trying to understand in the business world when that would be. He guessed that would be after the decision has been made to go ahead with it, prior to that time.

Michael Becker elaborated on **SEN. GRIMES** remarks. In the Y CHIP transaction for example, they negotiated on that transaction for over 2 years. The parties entered into an agreement, contingent on obtaining the regulatory approval. The agreement was signed, no money changed hands, nothing changed hands because of the ethicalness of that agreement was tied to obtaining the regulatory approval. He thinks that is how most transactions would happen. They would negotiate, they would make them

contingent on regulatory approval and notice would be sent and the clock would start ticking.

SEN. GRIMES said everybody is sitting on pins and needles waiting to see what happens.

Chris Tweeten asked **Michael Becker** to refresh his recollection, he doesn't have the whole file with him, but he seems to recall that the Insurance Commissioners review in the Y CHIP deal was triggered some time in the late summer, if he remembers right?

Michael Becker replied, in September.

Chris Tweeten answered, September the 30-day period for holding a hearing and then the additional 30 started to run. They had documents that were submitted to them by the parties that outlined the structure of that deal well in advance of that time.

Michael Becker said that was because they were keeping every one apprized of what was going on. They didn't want this to be a surprise to anyone.

Chris Tweeten said he understood that. He is not accusing him of hiding the ball or anything else, he is just saying that the information that is probably going to be required for one of these notices, he thinks is generally available well in advance of the time that the regulatory reviews are sought. To the extent that that information that is going to be asked for is going to be available that early in the process, the regulatory review isn't going to be the major portion of that. He doesn't think it was in the Y CHIP deal. It was the end of the delay, but he doesn't think the major portion of the time that was spent putting that deal together was involved in getting **Mark O'Keefe's** signature at the bottom of the approval.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 30}

SEN. GRIMES said he would imagine that these things could move fairly quickly especially in a small hospital if there was some conversions, and he would hate to hold that up.

Tom Ebzery, Representing the Yellowstone Community Health Plan, said what you have here is 90-days and 60-days, so the applicant is going to count on 150-days, 95% of the time that is going to happen. And he thinks they could talk about this until the cows come home, he doesn't have any problem with the 30, he thinks 60 is definitely too long, that is 150-days.

CHAIRMAN THOMAS said he appreciates his input. If they exempt this process from the RFP, that could be in lieu of an extension. Isn't that fair, they said that is the problem. Let's do an exemption in there, because he thinks they are right. They say 90 days, plus 60 days, it just seems to be the 150th day all the time.

SEN. CHRISTIAENS said it comes up to policy issues. He is interested if there are exceptions of true RFP's in the Insurance Commissioner's Office, or in the Attorney General's Office right now, and he doesn't think there are. That is a major switch in policy to start doing that, and they are talking only conversions now. Are we sure we want to start down that road?

CHAIRMAN THOMAS said for this purpose, at this point they are talking that has taken 2 years to put together and then they are going to turn it over to the state to hold it up for a half of a year?

Chris Tweeten said in response to **SEN. CHRISTIAENS** comments. First hiring outside counsel is exempt from the RFP process by statute. Second he believes in the legislation that was passed in 1995, when the Attorney General has the authority to contract for outside experts to review mergers of nonprofit hospitals, he thinks that those contracts for outside experts are exempt, if he remembers right.

SEN. CHRISTIAENS asked to follow that up. So what kinds of services do you think are under the requirement of RFP? If you can do most of these things now, what do you foresee needing an RFP on?

Chris Tweeten said the RFP process presently excludes, specifically excludes outside counsel. He believes it excludes expert witnesses for litigation already, to the extent they are talking about expert witnesses for litigation. He assumes that these experts are expert witnesses for litigation that would already be exempt. It excludes engineering services, and architectural services are also excluded. Other than that they have to be hired through the purchasing process.

CHAIRMAN THOMAS said they can copy California, they do 60-days with a 45-day extension. And then Nebraska is just 60-days period and apparently there is no extension.

Motion: **SEN. GRIMES said he would move the language to "60-days and 45-days extension."**

Chris Tweeten said they would live with what ever they do.

SEN. GRIMES said it was his impression that if a state as big as California, with as much nonprofit as they have can do it in that period of time, as long as they have the resources to do it, then we ought to be able to do it too. Ninety days is probably fine, but 60-days and 45-days is okay.

Chris Tweeten said if they are going to talk about 115-days, or 105-days or whatever the number is, maybe they can do 90-days and 15-days instead. The total is the same. But the trigger for the exemption would be 90-days, instead of 60-days.

CHAIRMAN THOMAS said he thought that was all right. They still are going to get an extension.

Michael Becker asked if it was 90-days and 15-days extension. So the sentence that omitted in the amendment will be put back in. The last sentence of Section 4, on Line 5, the Attorney General may extent this period for an additional 15-days.

Chris Tweeten said so they would delete Amendment #3, because they would still be providing an extension.

Susan Fox asked for clarification, then Amendment #5 would be deleted. They are going to delete 60-days and insert 15-days. Now is that other language, if the extension is necessary to obtain the information pursuant to, is that included in this? If any body needs to see it, it is #20.

CHAIRMAN THOMAS reiterated SEN. GRIMES MOTION TO ADOPT THESE AMENDMENTS TO SB 322 with the revisions that he has stated.

Vote: On voice vote the Motion Carried -3-0.

Susan Fox said the amendments on Section 5, which are Amendments #2 through #6, are the amendments that they saw in the Grey bill, the one that changed the meeting to public hearings. So they are the same Amendments #2 through #6. The major amendments are #7 through #12 and basically what happens in Section 6 is it is reduced to 2 subsections. The first one is in their Grey bill in essence, what was 1 (A), and the sentence will read, "in making a decision will it improve or disapprove a proposed nonprofit healthcare conversion transaction, the Attorney General shall consider whether the nonprofit healthcare entity will receive full and fair market value for the assets and operations that are the subject of the transaction." It is a combination of Amendments #7 through #10. So again what they read in subsection 1, that will be just one sentence, combined with 1 (A), then they would strike subsections #2 through #12, so all the varies elements.

Then what is on the Gray bill on Page 5, which was new language, that most of them have seen before, is slightly amended to read, "in evaluating the transaction, the Attorney General is bound by any findings of fact," etc. and reads as it reads in the Gray bill. So it's instead of the criteria that's above, because that criteria has been removed, the only criteria basically that is pulled is fair market value.

Susan Fox continued, Amendment #12 combines an existing amendment where the healthcare impact review elements were taken out, so Section 7 is gone. Also in the Grey bill there is a new Section 7, which was actually Section 8 in the original bill which is Rule Making Authority is no longer necessary. So Section 7 and 8 or the original bill would also be stricken in this amendment.

SEN. CHRISTIAENS reiterated so Section 7 and Section 8 of the original bill are stricken.

Susan Fox reconfirmed that. Which is basically the Rule Making Authority and the Health Impact Review Element.

Chris Tweeten said he understands because of the amendment to the Title, that there is going to be another amendment because of taking Rule Making Authority out?

Susan Fox answered that's amendment #12, Section 7 and Section 8.

Chris Tweeten asked what is the rationale for that, if he might ask?

CHAIRMAN THOMAS answered that he didn't know that Rule Making is necessary with all of the revisions that they are making.

Chris Tweeten said there is a long on going debate about the role of Rule Making, he would think that if he were an applicant, he would find Administrative Rules in this area helpful in getting an understanding of what the Attorney General expects to see in these applications, and how the Attorney General intends to evaluate these transactions. He would think Rule Making would be of assistance in this area.

CHAIRMAN THOMAS asked if there was anyone that wants to agree or disagree with that.

Steve Browning, Lobbyist for MHA, Montana Hospital Association said to the extent that they can rely on actual experience, whether it is by applicants, or by the regulators, or analogous situations, they really should rely on that experience. In this particular case they have one vote "agreed" applicant. You know,

what was your experience in this, did you want to have some sense of what the rules were that you were playing by, or not?

Chris Tweeten asked if he could follow up briefly before they respond. He thinks it is significant that in the Y CHIP transaction, when they were notified last spring by the attorney for Y CHIP that they were going to bring this transaction to them, they had two separate rounds of correspondence between them and Y CHIP, simply explaining to them, what they wanted in the course of the review. And having that information available in the form of Administrative Rule up front, he thinks would have been very helpful cutting through some of that red tape.

Michael Becker said they want to see how these amendments are unfolding here. But he thinks if there is sufficient requirements laid out in the statute and what he is seeing so far, he can live with, in so far as the notice, and what the Attorney General will be reviewing in these transactions and with these experts. He thinks it is a very narrow review. They are looking at the issue of fair market value. He thinks that's what the Attorney General's concern is, and in light of that, he really doesn't see where Rule Making is necessary. May be that is one subject they ought to put off until the end of this discussion as well, and see what else comes out of this debate.

CHAIRMAN THOMAS said they can do that. He said a concern that they pass this legislation and then under rules they something they took out of the bill, in rules later on and that is why he wanted that out of there. He is not suggesting that they would do that particularly, this is not directed at Chris, by any means, or the Attorney General's Office. It is just a rule on Rule Making. So that is his concern. They can pass the legislation and say what they want it to and then later Rules do the strangest things. So that is his concern, but they can come back to Rules, they don't need to decide on it now.

Steve Browning said they should not look, at least he doesn't look at Rules as being necessarily a bad procedure. He perceives the Rule Making procedure to be one in which the parties can talk about whether these rules deposed to make sense, and he has seen rules changed all time that are proposed rules. He sees also a lot of times where you have a rule making where no one shows up. It probably means that the rules are okay. He sees it more in the tax area, but this is a little bit like tax, you want really want to know what rules you are playing by. The reasons the hospitals are involving in this is they want to make sure they know what the bright lines are. What you can do and you can't do, that is real important to them.

Chris Tweeten said moving off of the Rule Making issue for the time being, the deletion of the Rule criteria in Section 6 is based on a somewhat mistaken impression with respect to the issues of interest to the Attorney General. The Attorney General is certainly interested in the idea of fair market value, that's one of the things that is key in these transactions. But breaches of fiduciary duty and private inurement of individuals are also significant issues that have cropped up in conversion transactions in other states. Situations for example where non-profits have converted and the boards of trustees of the formerly nonprofit agency have become employees of the for-profit, with huge compensation packages and profit sharing plans and stock options and all kinds of things. By which they are personally profiting as a result of the transfer of the those nonprofit assets into for-profit status. There are documented examples of that have taken place in other states. And that is why fiduciary duty and private inurement are issues that they also are going to be very interested in and those criteria.

These amendments are deleted and he thinks that is a mistake.

CHAIRMAN THOMAS asked if that eliminates his ability to look at that?

Chris Tweeten replied that depends. If the language in Section # 11, subsection 2, which preserves all the Attorney General's common-law authority remains in the bill, then they would always have the authority to look those issues. The question is whether they could get the assistance of outside experts to conduct those kinds of inquires.

CHAIRMAN THOMAS said it is his intent to leave that in the bill.

Chris Tweeten said so they would be back in the same situation that they are in now. In the sense that they have got the authority to hire experts with respect to evaluation. If they ask one of those experts to also give them advice with respect to these fiduciary duties questions, are they some how violating the law? Are they going to get into an argument with the applicant, about whether that's legitimate part of the scope of work that they are going to give one of these experts under one of these reviews? Because it goes to some of the Attorney General's common-law authority that has been specifically deleted from the bill. He thinks they need to preserve in the review criteria, a review of fiduciary responsibility and the potential for private inurement.

He said he will be the first to concede that a number of these listed criteria, all of which he thinks is verbatim out of the

Model Act, overlap with each other to a certain extent. So he would suggest that at the very least they keep, Subsection #4 and #6 of the criteria that are being deleted here which would give them the opportunity to also review breaches of fiduciary with respect to charitable assets and also private inurement questions. He thinks these are key in these transactions.

SEN. GRIMES said this is what is going through his mind. He doesn't disagree with him, but could possible be a problem, but it hasn't been in Montana. He likes incremental approaches, rather than everything all at one, which is kind of what happened when they first heard this bill, it was very subjective, very broad. If they had that right any way and they were going to them under the current duties and responsibilities, and they give them the resources to do it, it seems to him like if there is a real severe problem -- if there is a problem with creeping conversions, he thinks it is very easy for a legislature to come to in and take care of that. With the look back period. It is almost guilty until proven innocent, they are not trying to limit them, but on the other hand they are trying not to overwrite the law. That is where his concern is.

Chris Tweeten said in responding very briefly, in looking at the language that is in the introduced bill, which he thinks needs to be changed now in the wake of the demise of CI 75, but in just taking this, he is on Page 6, Line 14-16, which is the contracted services in the bill now. They have the authority to make applicant contract with experts to perform review functions at the direction of the Attorney General and to report to the Attorney General its analysis and conclusions regarding the proposed nonprofit healthcare conversion transaction.

Now if it is understood that regarding the transaction is broad enough to encompass not just value but also all of the other things that the Attorney General has authority to look at under existing statutory and common-law powers, then he doesn't think they have a problem with that.

SEN. GRIMES said he thought that would have been his intent because what he was thinking about here was they could just make the law and any other issues that the Attorney General deems important, but he thinks it is over here it is clear to state that they don't have to do that here.

Chris Tweeten replied if that is the clear understanding and intention of the Subcommittee, he thinks they can live with that.

CHAIRMAN THOMAS that was his understanding.

SEN. CHRISTIAENS asked if they are still on the original bill.

CHAIRMAN THOMAS clarified the discussion has not taken them off of the amendments, yet and they are to the original bill, and the discussion they just went through, if it is their understanding, settles the question of Amendment #7 through Amendment #10.

CHAIRMAN THOMAS asked **Susan Fox** including Amendment #11? He said okay.

Susan Fox said if they want to segregate them they can do it by Section if they prefer.

SEN. CHRISTIAENS asked for clarification.

Susan Fox said if there is no changes suggested to these amendments, if they don't want to save subsection 4 or 6 and if they want to reserve issue and wait until they get to the Section that **SEN. CHRISTIAENS** talked about on contracted services, then they could adopt them in total, but if they would like to divide them up between Section 5 and Section 6, and Section 7 and Section 8, that would be another way.

Steve Browning said he just wanted to make sure that he was following. As he understands what they are seeking to do, is to eliminate all these sub 1's through 12. Where do they do that in this amendment?

Susan Fox answered if you look at Amendment #11, where it strikes subsection 2 through subsection 12 in their entirety. And if you remember that is a numbered in the original bill, not in the Gray bill.

Steve Browning said that is what he was looking for and asked if he could just make one additional observation here. Something that was in Subsection 4 and #6. In fairness to **SEN. WATERMAN**, she came up to him after the confusion about yesterday's meeting and said, she pointed to Subsection 5, and #9, and said, why in the world would you want to delete those items. So he just wanted to at least ask the Subcommittee.

CHAIRMAN THOMAS questioned #5 and #9?

Steve Browning answered yes. So its whether the governing body of the nonprofit healthcare entity exercised due diligence in deciding to dispose of the nonprofit healthcare entity's assets, selecting the acquiring entity, and negotiating terms and conditions of the disposition, that was one.

She said she just couldn't understand why you would want to eliminate that and also #9...

CHAIRMAN THOMAS said they were not dealing with those yet, okay. Subsection #5 is amended in these first sections, but it's not deleted, right.

Susan Fox explained in Amendment # 11 they would delete #5 and #9. **Ms. Ezpery** just left, those were part of his amendments, and so those two subsections were the only ones that before today had been proposed to be deleted.

Steve Browning stated, in addition to #5 and #9, to get rid of #2 through #12.

Susan Fox continued explaining the rest of the amendment are ones that everyone has seen before.

Motion: SEN. GRIMES moved TO AMEND SB 322 BY ADOPTING AMENDMENTS #SB032214.asf.
EXHIBIT (phs62b03)

{Tape : 1; Side : B; Approx. Time Counter : 0 - 32}

Tom Ebzery spoke about the rules of the game. How are you going to know what you can do, if you don't know what the rules of the game are. These amendments are telling you what some of the rules of the game are. Maybe he is missing something here.

Chuck Butler said that gets back to **Mr. Browning's** question earlier of them with regard to the Y CHIP transaction. As **Mr. Tweeten** described, they did exchange communications. In fact they were very helpful and useful. He would suggest that each transaction is so different that it would be very difficult, and he is not the rule maker here, but to try and establish rules for transactions that include big hospitals, little hospitals, health service corporations, and you name it. A better way perhaps, is the way that the Attorney General responded to them and St. Vincent Hospital in their transaction, and that was through communications to let them know what they were looking for.

Chris Tweeten answered the way this discussion is playing out, he is concerned about the changes they made in the time frames for making this decision, along with **Mr. Butler's** assertion that they were going to spend the first several days, or several weeks of that time period trying to figure out what they are supposed to give them in terms of information. Because they can't tell them in advance by rule what the applicant has to consist of. So they can send them a one paragraph letter saying they intend to sell

such and such asset to such and such buyer on such and such date period, signed CEO. That constitutes their notice. Then they spend the next month or how ever long it takes trying to flesh out that proposal before they even get a chance to start bringing any expertise to bare to review it.

CHAIRMAN THOMAS said he understands what he is saying, but it seems to him that the old common sense rules come here. You could deny the application because you don't have enough data in front of you to make a decision. And if you had to go to court to block it, you could do that. They are trying to create some problem solver on something that they don't know for sure exists as a problem. Trying to ferret it out, so that they know exactly what's going to happen on something they really don't need to know. He is not taking a single thing away from what he said, but at the same token, there is the other side of all that for of us lay people that try to solve all this stuff.

Chris Tweeten asked if he could just react. There is a provision in the existing bill, that says they can deny an application bases on their conclusion that they didn't get sufficient information. That's included in this amendment. He doesn't see anything in the bill that gives them the legal authority to deny an application bases on the fact that they don't think they got enough information. They deleted that provision from the bill and it is his understanding, from what **Chairman Thomas** said earlier, that is an obstruction and that is the way that he is supposed to consider things when they delete it from the bill.

CHAIRMAN THOMAS answered okay, well that could be changed.

Michael Becker responded that he thought the Attorney General or any regulatory always has the ability to deny whatever, if they are not getting the information they need to make their regulatory decision. He doesn't think there's a court out there that would disagree with them if they don't have the information. In regard to a point that was made earlier about the need to have a review criteria on fiduciary duty and private inurement, he just wanted to say that under the remedy provisions in this bill, if the Attorney General has the ability to undue the transaction, there's not going to be any inurement. Further, the IRS (Internal Revenue Service) looks after inurement. They've got big jails that they put people in for taking charitable assets and violating the 501-C3 provisions. So inurement isn't just looked at by this Attorney General, the IRS and the federal government has a big hand in that as well. He thinks those elements, private inurement, looking after the fiduciary duty, if the transaction can be undone, whether there is a breach of fiduciary

duty or not, if it is undone, whether they have breached it or not doesn't matter.

Tom Ebzery said he thought these provisions were strangely broad. It was a fishing expedition. It was things that **Chris** just as an enigma and pulled them out and he just doesn't think the fit here. He thinks what they have done by removing them, they have -- and Chris was good enough to send over the common law information, they have plenty of authority to seek stuff, he just thinks they are broad. He supports the amendment.

SEN. GRIMES said he hates to interject this if he has to because the comparison, is something he is working very hard on this session. He thinks they made some mistakes when defining some of the perimeters under significance and more.

Actually that was Rule Making authority did that, but it's very broad and it would have been better for them to find another solution and move progressively. He views this as the same. It keeps crossing his mind every time he looks at this and he thinks especially if you are can do it anyway, especially they can always tighten it up later. They are doing something, they are holding people accountable and they may not have quite all the details for a small hospital, but then he doesn't want to force a small hospital to have to go through the rigamarole of everything here either. It's two sided. On the one hand it could affect lay out the criteria for a small operator of a mine, but on the other hand it makes them go through everything to do an EIS. It's an analog that he can't mistake it.

SEN. CHRISTIAENS said he doesn't know why on earth they would want to leave this up to the federal government in looking at fiduciary and inurement issues, when it is so much easier to work within your state and your state courts, rather than having the big hand over looking what you are doing. He is probably going to oppose this amendment.

{Tape : 2; Side : B; Approx. Time Counter : 0 - 5.3}

Michael Becker said he just wanted to clarify his comment in regard to what the IRS looks at. They don't look at fiduciary duty, they look at inurement, that's a 501-C-3 charitable asset issue under the IRS code.

SEN CHRISTIAENS responded that he understands that part.

SEN. GRIMES said he had a question, the Attorney General, obviously if they are going to give him discretion to review it, they have discretion to disapprove it, right? They are not

striking their authority here in any fashion. That is what he thought he heard **Mr. Chris Tweeten** say a little bit ago. That they have eliminated his ability to kind of deny a transaction?

CHAIRMAN THOMAS clarified they are just taking out the incomplete data. He thought that needs to be a an unwritten rule and that's just obvious on it's face. It doesn't need to be stated in the law. That would be a winner in court. They should move on and see what happens, they can move to amend the amendments as well **SEN. CHRISTIAENS**, in any way that they might want to modify these.

CHAIRMAN THOMAS clarified this set of amendments is **Amendment# SB032214.asf**.

Vote: With **SEN. CHRISTIAENS** VOTING "no", Motion Carried -2-1.

Steve Browning said just a point of observation. **SEN. WATERMAN** also said that she was planning on if major items were taken out she would plan on the Floor to try to have them reinserted.

CHAIRMAN THOMAS thanked him for letting the Committee know, and asked if they have any other amendments?

Chuck Butler said he had a question with regard to **SEN. CHRISTIAENS'** vote "no" vote on all of these?

SEN. CHRISTIAENS replied no, but they weren't segregated. **Chuck Butler** said okay, just so its clear.

Discussion:

Discussion between **SEN. CHRISTIAENS** and opponents about his "no" vote. **CHAIRMAN FRED THOMAS** said **SEN. CHRISTIAENS** was fine where they were at.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 8.3}

CHAIRMAN THOMAS asked **Susan Fox** to review **Amendments#SB032215.asf** He they didn't change these amendments, they are intact. Items #4 and #6 are the substance.

EXHIBIT (phs62b04)

Susan Fox explained that Amendments #1 and #2 are regarding from the Section 9, Contracted services for review, in essence that section is stricken, with the exception of the first phrase, (1) within the time periods provided in (section 4), the attorney

general may.. and then if they look at Amendment #2 that is how the remainder of this section would read.

"The Attorney General may retain at the expense the nonprofit healthcare entity, actuaries, accountants, or other experts that are not a part of the attorney general's staff that may be reasonably necessary to assist the attorney general in reviewing the proposed transaction to determine whether the corporation will receive fair market value for the assets. The nonprofit healthcare entity shall provide the attorney general and any experts retained under this section access to documents and records reasonable necessary to evaluate and review the transactions.

Susan Fox continued Amendments #3 through #5 amend, Section #10 on Public Records.

Chris Tweeten asked Amendment #2 is directly contrary to the discussion they just had with respect to the ability to use contracted services to support the other authority of the Attorney General beyond the issue of fair market value. This is specifically limited to personal identified outside counsel, which is a separate problem, but second it says, you can only use these experts to determine whether they get fair market value for the assets. The discussion they just had was that the intention was they would be able to use these experts for full gambit of the issues that the Attorney General has the authority to review. So they would resist the amendment.

CHAIRMAN THOMAS asked him where he was drawing that specifically to, where is the restriction on that?

Chris Tweeten answered if you look down to the 5th line of the insert, "reviewing the proposed transaction to determine whether the corporation will receive fair market value for the assets." That is a restriction on the use of the contracted services according to the way that this language was drafted.

Michael Becker said the way to fix that would be to strike everything after "proposed transaction" and change the word "transaction" to "nonprofit healthcare conversion transaction".

CHAIRMAN THOMAS asked **SEN. CHRISTIAENS** if that modification seemed okay?

SEN. GRIMES said let's just put a period after transaction.

Susan Fox clarified that the editors would probably change that to nonprofit healthcare conversion transaction.

Chris Tweeten asked if she could read the language again. He said with that amendment it would be fine. That would put them back in the situation they were in, in the introduced bill.

CHAIRMAN THOMAS said to **Susan Fox** they would be inserting that language before transaction, placing the period, and striking "to determine though assets." **Susan Fox** responded that was her understanding.

Michael Becker said if he might add the concern about that it doesn't specifically reference attorneys. They do have the catch all and other experts, but they have no problem if they want to throw the word in "attorney."

Chris Tweeten said one other suggestion along that line, he would propose that the language that he is not a part of the attorney general's staff be deleted. First of all for retaining them, he thinks it is assumed that they are not a part of their staff, but also if they put that language in there, that prevents them from hiring agency legal services to provide them with legal assistance. It winds up costing the applicants money (at a lessor fee), and the save the applicants probably \$60.00 - \$70.00 per hour, plus hiring ALS. So he thinks the applicants would want that.

CHAIRMAN THOMAS said they have consensus on that.

Chris Tweeten suggested they use the clause that is on Line 14 on Page 6, "who may include attorneys" from the existing bill. So it would read "actuaries, accountants, or other experts, who may include attorneys," and so on and so forth. And strike that "are not a part of the attorney general's staff."

Discussion:

About other various words and ways to change the language.

{Tape : 2; Side : A; Approx. Time Counter : 8.3 - 13.9}

SEN. GRIMES asked what has this really done to Section 9?

Susan Fox explained that Section 9 is written in the introduced bill, it was written to get around CI-75, so it was this way to make somebody else retain them. Since that's not a necessary issue, it is kind of a reverse. In essence it allows the attorney general to go ahead and retain those, and they can charge or get reimbursed for those costs later. But under CI-75 you would have had to put it to a vote. Since that issue is gone it can reverse. There are some other provisions in Section 9

that are stricken in this amendment. It is a different way to form it, but they had a previous amendment to change this.

SEN. GRIMES asked but the breadth and the intent is the same?

Susan Fox answered for part of it.

CHAIRMAN THOMAS asked if they couldn't add "attorneys" in the language with actuaries and accountants?

Chris Tweeten said in the COPULA legislation there is a similar provision that allows for the retention of experts and the passing through of the costs, and he drafted an amendment that was modeled after that language. He doesn't think they need to consider it with this amendment because he thinks this amendment is fine, except for one thing. In the COPULA amendment, the COPULA has a statutory corporation in it. That actually allows them to take the money that they get from the company and spend it on the experts. Ordinarily if they recoup their costs, it goes into the General Fund, and without a statutory appropriation, it puts it in a special revenue account and the money really doesn't help the Department of Justice's budget, it just goes to the General Fund.

CHAIRMAN THOMAS said he didn't know if they could do that with this bill at this time.

Tom Ebzery said he thought if they were to do that, even though he agrees with **Chris Tweeten**, he thinks if they want to kill this bill that's the easiest way to some kind of thing like that in it and sent it down to appropriations.

Discussion:

About the bill being a statutory appropriation. **Chris Tweeten** asked about it being up the Leadership.

SEN. GRIMES commented that he didn't think they should do that.

SEN. CHRISTIAENS asked if **Susan Fox** could read now what this says. He thinks he's got it, but he's not sure.

Susan Fox clarified that the "attorney general may retain at the expense of the nonprofit healthcare entity actuaries, accountants, attorneys or other experts that may be reasonably necessary to assist the attorney general in reviewing the proposed nonprofit healthcare conversion transaction." Then the next is "The nonprofit healthcare entity shall..."

Chris Tweeten asked **Susan Fox** if the other amendments dealing with public records, are those the ones that they put in the Grey bill?

Susan Fox answered they do include all of the Grey bill, but there are some changes. If they look at Amendment #3, in the public record section it would read, "all documents and records excluding any proprietary or confidential information submitted to the attorney general by any person. In the Public Record Section it would read, "all documents and records excluding any proprietary or confidential information submitted to the attorney general by any person. Then it goes into final analysis, submitted by the attorney general, and then there is an inserted "by any experts pursuant to Section... whatever. excluding any proprietary or confidential information of public records.

Michael Becker stated they have no objection to the proposed amendments as rewritten.

Motion/Vote: SEN. CHRISTIAENS moved TO AMEND SB 322 BY ADOPTING AMENDMENTS #SB032215.asf, with SEN. GRIMES voting "yes" by proxy the Motion carried 3-0.

{Tape : 2; Side : A; Approx. Time Counter : 13.9 - 18.8}

CHAIRMAN THOMAS said he wanted to go back to Amendments #4 and #6 at this point.

SEN. CHRISTIAENS said he believed those Amendment should not be removed from the bill. They fit in this bill. He thinks they need to be looked at.

Motion/Vote: SEN. CHRISTIAENS MOVED THAT AMENDMENTS #4 AND #6 LANGUAGE BE RE-INSERTED BACK INTO SECTION 6, PAGE 4 OF THE ORIGINAL BILL, WITH SEN. GRIMES voting "yes" by proxy the Motion carried 3-0.

{Tape : 2; Side : A; Approx. Time Counter : 18.8 - 19.7}

Tom Ebzery said what it looks like to him they would have under a new Section 6, you would have a #1, #2 and #3?

Susan Fox said and then Section 4, would be the Subsection about evaluating the transition. What it will be is (1) a, b and c and then (2).

Chris Tweeten said then a will be existing subsection (1), b will be existing (4) and c will be existing (6).

Susan Fox answered correct.

{Tape : 2; Side : A; Approx. Time Counter : 19.7 - 21.6}

Susan Fox explained subsection in the introduced bill is divided into basically three subsections. The first sentence is the first subsection, and the change in that is to the word "void" on Line 4. It changes it to the "nonprofit healthcare conversion transaction entered into and violation of the notice, review or approval requirements is voidable, instead of four. So that would be the first subsection.

The next sentence is deleted from "the provisions, lines 4 through 6. Subsection (2) begins on line 6, and that sentence in essence is subsection (2), "the attorney general may initiate proceedings in the district court of the first judicial district or the judicial district for the county in which the nonprofit healthcare entities assets that are intended to be transferred are located." Following that word on line 8 strike, "the proceedings may be brought against any member through line 15.

It takes out "proceeding against a member, officer or employee, the civil penalty provision and also the license to operate the hospital or license or certificate of authority, not being allowed to be issued or renewed," is also stricken.

The from the Grey Bill, what was in the Grey Bill that was subsection 4 that stated, "proceedings to declare a transaction void may be brought," the Committee can see this in Amendment #4, where they insert subsection (3) that was in the Grey Bill, "brought against any entity that was a party to the transaction or a successor in interest to a party.

Then what was the original subsection (2) talked about the common-law authority of the attorney general. That remains in the bill, but now becomes subsection (4). So those are the changes in the penalty section which now becomes exclusively a remedy section.

There was a new section on judicial review in the Grey Bill. This would be a substitute for that section of judicial review, and it can be read in its entirety in #5. Because of the drafting, she changed some of the proposed language, so that all of the respected attorneys can look at it and see if it still says what they meant it to say.

Section 16 which was the effective date, immediate effective date is stricken and makes the bill effective on October 1, 1999.

Chris Tweeten asked what the purpose would be in delaying the effective date until October 1? Without rule making why can't they make it immediately effective?

CHAIRMAN THOMAS replied the normal date that legislation takes effect and not having any thing pending right now, is there some sort of reason to have it in effective.

Chris Tweeten said it seems to him that it just opens the window for parties to consummate one of these transactions in the next 9 months without the opportunity to take advantage of what this bill provides.

CHAIRMAN THOMAS asked didn't Y CHIP go through a similar review without this bill?

Chris Tweeten answered not similar in the respect that they didn't have the option of hiring some expert to take a look at the value of the Y CHIP transaction. They were simply required to take the applicants because they didn't have the resources to conduct their own review. So it wasn't similar.

CHAIRMAN THOMAS ask **Chris Tweeten** if there is a concern that he has of somebody doing that in this window.

Chris Tweeten answered he doesn't know what might be in the minds of the regulated community with respect to doing one of these transactions. All he knows is that if any body is thinking about doing one of these transactions and you open that window, there going to try to jump through it without this kind of a review.

Peter Funk, Attorney said their office within the last week has had discussions with a Montana based insurer about a conversion for profit status.

Michael Becker said it was not them, they wanted it to be very clear that it was not Blue Cross/Blue Shield.

{Tape : 2; Side : A; Approx. Time Counter : 21.6 - 28}

Tom Ebzery said he didn't know how somebody could slide under the window and he doesn't know any this amendment, but it seemed reasonable to him at the first look. But if **Peter Funk** says there's a monster out there then.

Peter Funk said is doesn't frankly disagree with **Mr. Tom Ebzery's** comments. These types of transactions do tend take a lot of time, but in terms of whether there's anything out there, there are some possibilities out there.

SEN. CHRISTIAENS said since they don't know that there are or not, he doesn't necessarily see what a problem it would be to have it be effective on passage and approval. If there aren't any, no one knows of any other than what a recent inquire to the Insurance Commissioner, is that a problem, he doesn't see that there is.

CHAIRMAN THOMAS asked is there was something on going out there in the public now that they know about that this would apply to? They have given one example and that sounds like that may have been a start that may take some time.

Peter Funk said he would say that the length of time it takes isn't in their hands.

Chris Tweenten said he is giving them incentive to get it done.

Chuck Butler said he would like to say something because it is really important for the trust factor here. He knows that **Peter Funk** will confirm this. They went to the Insurance Commissioner 2 1/2 years before they consummated the deal. They brought to **Commissioner O'Keefe** and his staff from almost the first day they entertained a discussion with the people at St. Vincent's Hospital. The fact is they started a discussion. They told **Commissioner O'Keefe** they would be back in a year, in fact it was a year. They thought in a year they would have the deal for him to start considering and a year later they told they were a year into discussions and they had a long way to go. **Commissioner O'Keefe's** reaction was he was real surprised that they were there so soon. He really was surprised that they were back again so soon. They said they hoped they would be back in about 6 months. And in fact they were back in 6 months to say they were 6 months further down the road and they are not any further in terms of making a filing.

Soon there after well into 6 months prior to the time they made a filing with the Attorney General, some of the people at this table met with **Chris Tweenten** and **Ms. Baker** from the Attorney General's staff. At which time they told them what they were going to do, or what they were hoping they could do. This is really important for the trust factor between in their organization, which this bill if it assuming there are some other issues evolve someday, and hospitals. There is a real trust issue here, **Chris**, that he knows the Auditor **Mark O'Keefe** will agree that they were there 2 1/2 years before they even made a filing and with the Attorney General's Department, they were 6 months before they made a filing. And if they had anything on their plate today, they would be there. **Chairman Thomas** had this bill effective on October 1, which is normal process, that's only

5 months from now. He just has to say there is a real trust issue here that he hopes they still have with one another.

{Tape : 2; Side : B; Approx. Time Counter : 0 - 3.6}

Chris Tweeten said he thinks **SEN. CHRISTIAENS** is right on point. If there are none of these transactions in the works, making it immediately effective isn't going to harm anyone. If however there are some of these transactions out there that they don't know about, delaying effective until October 1, may in fact have a significant affect on their ability to review what the transactions are going to contain. It doesn't have any thing to do if whether they trust Blue Cross/Blue Shield or not because with the amendments they have already adopted, if they don't hold any charitable assets, as they say they don't, then it doesn't even apply to them. So it really doesn't bring that into play at all. If there is a risk in one of these transactions, it may be out there and coming to fruition, then it is just pertinent to make to make this bill effective now. So they have the resources to conduct the review, rather than making it effective in October and creating the possibility for a transaction to slip through before they have those resources. So his sense would be that it makes sense to leave it immediately effective if they can.

SEN. CHRISTIAENS said he is trying to move this forward and give everybody a little bit.

Motion: **SEN. CHRISTIAENS MOVED THAT THE EFFECTIVE DATE IN SB 322 BE JULY 1, 1999.**

SEN. CHRISTIAENS said that's only 3 months away, so people would have to move pretty fast and it is better that October 1, 1999.

CHAIRMAN THOMAS clarified that he would move to amend Amendment #6 SB032216.asf., to change the effective date to July 1, 1999.

Chris Tweeten said he just wanted to point out for the Subcommittee that if they do that, giving the language that is in the savings clause on Page 10, Lines 15 and Lines 17, any transaction that begins before July 1st is exempt from review under the statute. So they are still opening a window here. He appreciates **SEN. CHRISTIAENS** attempt to compromise, but they have to understand that given that savings clause language, if they take the first steps towards this transaction before July 1st, then there is nothing that covers it in the bill. He'll just point that out.

Chuck Butler commented if somebody has been following the activities of this bill and they were up to something, they

probably sure would be working on it right now in anticipation that this is going to become law.

Vote: On SEN. CHRISTIAENS motion, the motion carried -3-0.

Motion/Vote: SEN. CHRISTIAENS moved AMENDMENT# SB032216.asf, #1 through #5 to SB 322 BE ADOPTED, with SEN. GRIMES voting "yes" by proxy the Motion carried -3-0.

EXHIBIT (phs62b05)

CHAIRMAN THOMAS asked if there were any other sets of amendments and if any body had any amendments they wished to propose?

Michael Becker said he believed there was one more amendment on the table.

CHAIRMAN THOMAS said he had a copy of that one and it was about the material amount. He asked **SEN. CHRISTIAENS** if he wanted to go back to **Amendments #SB032212?**

SEN. CHRISTIAENS reiterated that they were talking about the "material amount"? **SEN. CHRISTIAENS** said he would moved the "Material amount" be set at 20%.

Discussion:

SEN. CHRISTIAENS said one of the reasons that he is doing this is because of the information that he has that shows California, Rhode Island, and the Consumers Union Draft Legislation all at 20%. Vermont is at 10% and South Dakota is at 30%. He doesn't really see any reason to increase that.

EXHIBIT (phs62b06)

CHAIRMAN THOMAS asked him if he would move this amendment and then vote against it.

SEN. CHRISTIAENS answered reluctantly he would move this amendment.

Motion: SEN. CHRISTIAENS moved that **SB 322 BE AMENDED BY ADOPTING AMENDMENT #SB03312.asf, Item #2.**

CHAIRMAN THOMAS explained this was just the process. He clarified this was **Amendment #SB032212.asf, Item #2.** So everyone could understand he explained he couldn't make a motion so that is why they were using this procedure.

Vote: On voice vote the motion that SB 322 be amended by adopting AMENDMENT #SB032212.asf, Item # 2, with SEN. GRIMES voting "yes" and SEN. CHRISTIAENS voting "no" the motion carried -2-1.

{Tape : 2; Side : B; Approx. Time Counter : 0 - 8}

Chris Tweeten said he had one suggestion. If they are going to delete the numerator and the denominator language that the MHA (Montana Hospital Association) has proposed, they need to add some language to this to make it clear that the 40% is exactly the reference to fair market value. A sentence that would be grafted on to the end of this that **Susan Fox** is distributing right now would do that.

Discussion

CHAIRMAN THOMAS asked if anyone wanted to discuss the amendment. He asked **Chris Tweeten** if he was saying what it was based on?

Chris Tweeten said he talked to **Tom Ebzery** about this. He didn't get the impression that removing the numerator and denominator language that he was intending to change the fair market value standard. So he thinks this is simply clarifying.

Motion: **SEN. CHRISTIAENS** moved **TO AMEND SB 322 BY ADOPTING PROPOSED AMENDMENT 3, SET 09.**

EXHIBIT (phs62b07)

Michael Becker said that he talked with their financial people about these calculations would be made. They told him that corporations, particularly nonprofit corporations do not carry valuations at fair market value on their books. They carry them on book value. What you paid, what you depreciated it, that's what your asset is carried on the books. So he asked what is the fair market value of this corporation's assets, so they know where's the trigger here. What are they talking about at this 40%? They said, they'd have to go out and hire someone to value those assets at fair market value. What are the desks, the computers, the real property, the book of business, and make that triangulation. That was news to him. He's not an accountant, he didn't know that.

Chris Tweeten said they are going to have to do that for the transaction any way, because they are going to have to know what the fair market value is so that they can negotiate the sale and satisfy the review criteria.

CHAIRMAN THOMAS said if you go with book value, 40% is a lot less than 40% of market value.

Chuck Butler said they wanted it at 50%, just so the record is clear.

Vote: Motion to amend SB 332 by adopting proposed amendment 3, set 09. The motion carried 2-0.

ADJOURNMENT

Adjournment: 12:55 P.M.

SEN. Duane Grimes, Vice Chairman

MARTHA MCGEE, Secretary

AB/MM

EXHIBIT (phs62bad)